



October 21, 2022

Russell L Porter
212.915.5140 (direct)
508.982.3343 (mobile)
Russell.Porter@wilsonelser.com

VIA ECF AND E-MAIL

Hon. Katherine Polk Failla, U.S.D.J.
United States District Court, Southern District of New York
40 Foley Square, Room 2103
New York, NY 10007

Re: *Fometal, S.R.L. v. Keili Trading, LLC, et. al.*
Case No.: 1:22-cv-01928-KPF

Dear Honorable Judge Polk Failla:

We represent Defendant O’Neal Flat Rolled Meats [sic] aka Metal West LLC (“Metalwest”). Please accept this correspondence as Metalwest’s response to Plaintiff Fometal S.R.L.’s (“Plaintiff” or “Fometal”) motion for a default judgment against Defendants Keili Trading LLC (“Keili Trading”) and Mendel Levitin (“Levitin”).¹

This case should be a simple non-payment action against Keili Trading and Levitin. Metalwest’s predecessor, O’Neal Flat Rolled Metals LLC (“O’Neal”) ordered aluminum sheets from Keili Trading through its principal, Levitin. Levitin then apparently ordered the aluminum he intended to sell to O’Neal from Plaintiff and never paid for the same. Plaintiff has improperly sought to portray this matter as a civil conspiracy involving a variety of unconnected entities who also apparently placed orders with Keili Trading that Keili Trading intended to fulfill with aluminum Levitin intended to buy from Plaintiff. Metalwest has moved to dismiss on a variety of grounds, including lack of personal jurisdiction.²

¹ Fometal’s motion for a default judgment against Keili Trading and Levitin appears on the Court’s docket at ECF No.: 68-70.

² Metalwest’s submissions in support of its motion to dismiss appear on the Court’s docket at ECF No.: 47-50 and 64.

Metalwest takes no position as to the issuance of a default judgment against Keili Trading and Levitin. Plaintiff's motion, however, contains certain statements portrayed as "facts" regarding Metalwest that are not true. For example, Plaintiff's Memorandum of Law submitted in support of the motion states that "Defendant Metal West ailed and or refused to pay" for aluminum Keili Trading or Levitin ordered from Fometal. (ECF No. 69, p. 1). This statement presupposes that Metalwest had an obligation to pay Fometal, which is not true. Plaintiff also claims that "Metal West arranged for the aluminum steel to be assigned to Keili ... without Plaintiff Fometal's consent." (*Id.*). That is also false. These statements should not be taken as fact.

Moreover, several of Plaintiff's submissions filed in connection with its default judgment motion further support Metalwest's request for dismissal based on lack of personal jurisdiction. As noted in Metalwest's motion to dismiss, Metalwest is not subject to general jurisdiction in New York. (ECF No. 50, p. 6). The transaction at issue has no connection to New York. The aluminum that Keili Trading ordered was delivered in Long Beach, California.

Thus, Fometal's sole basis for asserting jurisdiction in New York is that Levitin was acting as Metalwest's agent and that he lives in Brooklyn. (*Id.* at p. 7). Yet, in seeking a default judgment against Keili Trading and Levitin, Plaintiff has relied upon service that it attempted to effectuate upon both defendants in **Washington State**. This further undermines the validity of Plaintiff's loan basis for asserting that Metalwest is subject to personal jurisdiction in this Court.

Respectfully submitted,

Wilson Elser Moskowitz Edelman & Dicker LLP



Russell L Porter

cc: All parties (Via ECF)